

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 92-186

In re Applications of

KCBX, INC.
(hereafter "KCBX")
Channel 207B
San Luis Obispo, California

File No. BPED-890619MH

LOGOS BROADCASTING CORPORATION
(hereafter "Logos")
Channel 207B
San Luis Obispo, California

File No. BPED-910219MJ

For Construction Permit
for a New Noncommercial Educational FM Station

HEARING DESIGNATION ORDER

Adopted: August 5, 1992;

Released: August 19, 1992

By the Chief, Audio Services Division:

1. The Commission has before it the above-captioned mutually exclusive applications for a new noncommercial educational FM station.

2. *Financial.* KCBX answered "yes" to Item 1, Section III, Page 5 of FCC Form 340 which indicates whether the applicant is contingent upon receipt of a grant from the National Telecommunications and Information Administration (NTIA). During legal review, the staff discovered that KCBX had never applied for NTIA funding. Accordingly, a financial issue will be specified below.

3. *Late-filed Amendment.* The applicants below petitioned for leave to amend their applications on the dates shown. The accompanying amendments were filed after the "A" cut-off date, the last date for filing minor amendments as of right. Under Section 1.65 of the Commission's Rules, the amendments are accepted for filing. However, an applicant may not improve its comparative position after the time for filing amendments as of right has passed. Therefore, any comparative advantage resulting from the amendments will be disallowed.

APPLICANT

DATE FILED

1. KCBX	October 31, 1991
2. Logos	October 28, 1991

4. Neither of the applicants has indicated that an attempt has been made to negotiate a share-time arrangement. Therefore, an issue will be specified to determine whether a share-time arrangement between the applicants

would be the most effective use of the frequency, and thus better serve the public interest. *Granfalloon Denver Educational Broadcasting, Inc.*, 43 Fed. Reg. 49,560, published October 24, 1978. In the event that this issue is resolved in the affirmative, an issue will also be specified to determine the nature of such an arrangement. It should be noted that our action specifying a time-sharing issue is not intended to preclude the applicants, either before the commencement of the hearing or at any time during the course of the hearing, from participating in negotiations with a view toward establishing a share-time arrangement.

5. Inasmuch as it appears that there would be a significant difference in the size of the areas and populations which would receive service from the proposals, and since this proceeding involves competing applicants for noncommercial educational facilities, the standard areas and populations issue will be modified in accordance with the Commission's prior action in *New York University*, FCC 67-673, released June 8, 1967, 10 RR 2d 215 (1967). Thus the evidence adduced under this issue will be limited to available noncommercial educational FM signals within the respective service areas.

6. Except as may be indicated by any issues specified below, the applicants are qualified to construct and operate as proposed. Since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

7. Accordingly, IT IS ORDERED, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine, with respect to KCBX, whether the applicant is financially qualified.

2. To determine: (a) whether a share-time arrangement between the applicants would result in the most effective use of the channel and thus better serve the public interest and, if so, the terms and conditions thereof; (b) the extent to which each of the proposed operations will be integrated into the overall cultural and educational objectives of the respective applicants, and (c) whether other factors in the record demonstrate that one applicant will provide a superior FM educational broadcast service.

3. To determine, in light of the evidence adduced pursuant to the specified issues, which of the applications should be granted, if any.

8. IT IS FURTHER ORDERED, That the petitions for leave to amend filed by KCBX and Logos ARE GRANTED, and the corresponding amendments ARE ACCEPTED to the extent indicated herein.

9. IT IS FURTHER ORDERED, That a copy of each document filed in this proceeding subsequent to the date of adoption of this Order shall be served on the counsel of record in the Hearing Branch appearing on behalf of the Chief, Mass Media Bureau. Parties may inquire as to the identity of the counsel of record by calling the Hearing Branch at (202) 632-6402. Such service shall be addressed to the named counsel of record, Hearing Branch, Enforcement Division, Mass Media Bureau, Federal Communications Commission, 2025 M Street, N.W., Suite 7212, Washington, D.C. 20554. Additionally, a copy of each

amendment filed in this proceeding subsequent to the date of adoption of this Order shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Federal Communications Commission, Room 350, 1919 M Street, N.W., Washington D.C. 20554.

10. IT IS FURTHER ORDERED, That, to avail themselves of the opportunity to be heard, the applicants and any party respondent herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

11. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

FEDERAL COMMUNICATIONS COMMISSION

W. Jan Gay, Assistant Chief
Audio Services Division
Mass Media Bureau